

REMARKS/ARGUMENTS

This application has been reconsidered carefully in light of the Office Action dated as mailed on 22 September 2005. A careful reconsideration of the application by the Examiner in light of the foregoing amendments and the following remarks is respectfully requested.

This response is timely filed as it is filed within the three (3) month shortened statutory period for response to the outstanding Office Action.

No additional claim fee is believed due as a result of this Amendment because neither the total number of pending claims nor the number of pending independent claims is believed to exceed the total number and the number of independent claims, respectively, for which fees have previously been paid. If, however, it is determined that such a fee is properly due as a result of this communication, the Commissioner is hereby authorized to charge payment of such fees or credit any overpayment, associated with this communication, to Deposit Account 19-3550.

Amendment to the Claims

By the above,

1. claims 50 and 59 have been canceled without prejudice, and
3. claims 60 and 61 have been added to more fully and completely claim the disclosed subject matter.

Newly added claim 60 requires the wicking barrier to be a polymeric film. Such limitation finds support throughout the originally-filed patent application such as at page 40, lines 22-30, and page 59, line 9 through page 60, line 22, for example.

Newly added claim 61 requires the free-flowing particles comprise hardwood nits. Such limitation finds support throughout the originally-filed patent application such as at page 6, line 11 through page 7, line 4, and page 38, line 21 through page 39, line 14, for example.

Claims 1-49, 51-58, 60 and 61 remain in the application

Allowable Subject Matter

The Action does not include any rejection, prior art-based or otherwise, of claim 40. In view thereof, the undersigned is appreciative of the Examiner apparently finding claim 40 allowable and notification to that effect is solicited.

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Claims Rejections - Double Patenting

1. Claims 41, 43-49 and 51-59 were rejected under U.S.C. §101 as claiming the same invention as that of claims 39-46 and 48-56 of prior U.S. Patent 6,667,424.

The rejection of claim 59 is moot in view of the above cancellation thereof.

10 The balance of these rejections are respectfully traversed.

The Manual of Patent Examining Procedure (MPEP) specifically provides:

A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. [See MPEP 804IIA]

15 Claim 39 of U.S. Patent 6,667,424 requires that the claimed absorbent article comprise:

- a) a liquid impervious backsheet;
- b) a liquid pervious topsheet attached to the backsheet;
- c) a conformable intake member comprising a pouch containing free-flowing particles;
- d) an outer shaping member laterally surrounding the pouch; and
- e) a wicking barrier between at least a portion of the pouch and the outer shaping member,

20 wherein the free-flowing particles have a Flowability Coefficient of about 2 or greater. [Emphasis added.] Each of claims 40-46 and 48-56 of U.S. Patent 6,667,424 are dependent on claim 39.

Subject claim 41 is an independent claim. Claim 41 is directed to an absorbent article for use on the body of a wearer, the absorbent article having a longitudinal axis, a transverse axis, two longitudinal sides, a target zone and a body side. Claim 41 requires that the absorbent article comprise:

- 5 a) a liquid impervious backsheet;
 b) a liquid pervious topsheet attached to the backsheet;
 c) a conformable intake member comprising a pouch containing free-flowing particles; and
 d) an outer shaping member laterally surrounding the pouch,

10 wherein the free-flowing particles have a Flowability Coefficient of about 2

or greater.

Clearly, subject claim 41 does not require the inclusion of a wicking barrier let alone the inclusion of a wicking barrier between at least a portion of the pouch and the outer shaping member, as set forth in claims 39-46 and 48-56 of prior U.S. Patent 15 6,667,424. Consequently, subject claim 41 could be literally infringed by an absorbent article that does not have "a wicking barrier between at least a portion of the pouch and the outer shaping member" while claim 39 of U.S. Patent 6,667,424 would not be literally infringed by such an absorbent article. Similarly, subject claims 43-49 and 51-58, which are dependent on claim 41, could be literally infringed by an absorbent article that 20 does not have "a wicking barrier between at least a portion of the pouch and the outer shaping member" while claims 40-46 and 48-56 of U.S. Patent 6,667,424, which are dependent on are dependent on claim 39 of U.S. Patent 6,667,424, would not be literally infringed by such an absorbent article.

In view thereof, the same invention double patenting rejections of claims 41, 25 43-49 and 51-58 are believed to be improper. The withdrawal of such rejections and notification to that effect is solicited. Moreover, as the subject double patenting rejection is the only stated basis of rejection of claims 41, 43-49 and 51-58 and as such basis of rejection is believed to be improper and/or overcome, these claims are believed to be in condition for allowance and notification to that effect is solicited.

2. Claim 30 was rejected under U.S.C. §101 as claiming the same invention as that of claim 1 of prior U.S. Patent 6,667,424.

This rejection is respectfully traversed.

5 As set forth above, the MPEP specifically provides:

A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. [See MPEP 804IIA]

10 Claim 1 of U.S. Patent 6,667,424 requires that the claimed absorbent article comprise “a pouch filled at least in part with free-flowing cellulosic nits, the nits comprising papermaking fibers and a nit conditioner effective to improve free flow of the nits as compared to the nits without the nit conditioner, wherein the free-flowing cellulosic nits have a Flowability Coefficient of about 2 or greater.”

15 Subject claim 30 states:

20 30. The absorbent article of Claim 21, wherein the free-flowing particles have a Flowability Coefficient of about 2 or greater.

Subject claim 21 states:

25 21. An absorbent article for use on the body of a wearer, the absorbent article having a longitudinal axis, a transverse axis, two longitudinal sides, a target zone and a body side, comprising:

- 30
- a) a liquid impervious backsheet;
 - b) a liquid pervious topsheet attached to the backsheet;
 - c) a conformable intake member comprising a pouch containing free-flowing particles;
 - d) an outer shaping member laterally surrounding the pouch; and
 - e) a wicking barrier between at least a portion of the pouch and the outer shaping member.

35 Clearly, subject claim 30 could be literally infringed without literally infringing claim 1 of U.S. Patent 6,667,424. For example, the absorbent article of subject claim 30 requires the claimed absorbent article comprise “free-flowing particles” whereas claim 1 of U.S. Patent 6,667,424 requires that the claimed absorbent article comprise a pouch filled at least in part with “free-flowing cellulosic nits, the nits comprising

papermaking fibers and a nit conditioner". Thus, subject claim 30 could be literally infringed by an absorbent article wherein the "free-flowing particles" are not necessarily "free-flowing cellulosic nits, the nits comprising papermaking fibers and a nit conditioner", as required by claim 1 of U.S. Patent 6,667,424.

5 In view thereof, the same invention double patenting rejection of claim 30 is believed to be improper. The withdrawal of such rejection and notification to that effect is solicited. Moreover, as the subject double patenting rejection is the only stated basis of rejection of claim 30 and as such basis of rejection is believed to be improper and/or overcome, claim 30 is believed to be in condition for allowance and notification to that
10 effect is solicited.

3. Claims 42 and 50 were rejected under the judicially created doctrine of obviousness-type double patenting over claim 39 of U.S. Patent 6,667,424 in view of U.S. Patent 5,597,873 to Chambers et al. (hereinafter "Chambers").

15 The rejection of claim 50 is moot in view of the above cancellation thereof. The rejection of claim 42 is respectfully traversed.

As set forth above, claim 39 of U.S. Patent 6,667,424 requires that the claimed absorbent article comprise:

- 20 a) a liquid impervious backsheet;
b) a liquid pervious topsheet attached to the backsheet;
c) a conformable intake member comprising a pouch containing free-flowing particles;
d) an outer shaping member laterally surrounding the pouch; and
25 e) a wicking barrier between at least a portion of the pouch and the outer shaping member,

wherein the free-flowing particles have a Flowability Coefficient of about 2 or greater. [Emphasis added.]

Subject claim 42 does not require the inclusion of a wicking barrier let alone the inclusion of a wicking barrier between at least a portion of the pouch and the outer shaping member, as set forth in claim 39 of prior U.S. Patent 6,667,424. Moreover, there has been no prior art showing of an absorbent article for use on the body of a wearer, the

absorbent article having a longitudinal axis, a transverse axis, two longitudinal sides, a target zone and a body side, the absorbent article comprising:

- a) a liquid impervious backsheet;
- b) a liquid pervious topsheet attached to the backsheet;
- c) a conformable intake member comprising a pouch containing free-flowing particles; and
- d) an outer shaping member laterally surrounding the pouch,

wherein the free-flowing particles have a Flowability Coefficient of about 2 or greater and wherein the free-flowing particles also have a Centrifuge Retention Capacity of about 1.5 g/g or greater, as required by claim 42.

Thus, this double patenting rejection of claim 42 is believed to be improper.

The withdrawal of such rejection and notification to that effect is solicited. Moreover, as the subject double patenting rejection is the only stated basis of rejection of claim 42 and as such basis of rejection is believed to be improper and/or overcome, claim 42 is believed to be in condition for allowance and notification to that effect is solicited.

4. Claims 12, 13 and 29 were rejected under the judicially created doctrine of obviousness-type double patenting over claim 35 of U.S. Patent 6,667,424.

In the rejection of these claims, the Action states:

Although the conflicting claims are not identical, they are not patentably distinct from each other because while the AUL and CFC are claimed together in the patented claims [sic], it would be obvious to one of ordinary skill in the art that particles meeting one limitation would likely meet the second, and therefore are not patentably distinct.

These rejections are respectfully traversed.

With regard to claims 12 and 13, there has been no prior art showing of support for the contention that "particles meeting one limitation would likely meet the second". For example, there has been no prior art showing correlating nits having "an AUL value of about 10 grams/gram or greater" (as required by claim 12) with nits having "a Centrifuge Retention Capacity value of about 1.5 or greater" (as required by claim 13) such as to base the contention that "particles meeting one limitation would likely meet the second".

With regard to claim 29, claim 29 is dependent on claim 21. As set forth above, claim 21 states:

An absorbent article for use on the body of a wearer, the absorbent article having a longitudinal axis, a transverse axis, two longitudinal sides, a target zone and a body side, comprising:

- 5 a) a liquid impervious backsheet;
- b) a liquid pervious topsheet attached to the backsheet;
- c) a conformable intake member comprising a pouch containing free-flowing particles;
- 10 d) an outer shaping member laterally surrounding the pouch; and
- e) a wicking barrier between at least a portion of the pouch and the outer shaping member.

In contrast, claim 35 of U.S. Patent 6,667,424 states:

15 35. An absorbent article comprising a pouch filled at least in part with free-flowing cellulosic nits, the nits comprising papermaking fibers and a nit conditioner effective to improve free flow of the nits as compared to the nits without the nit conditioner, wherein the nits have an AUL value of about 10 grams/gram or greater and a Centrifuge Retention Capacity value of 20 about 1.5 or greater.

Clearly, claim 35 of U.S. Patent 6,667,424 makes no mention of components such as: "a liquid impervious backsheet"; "a liquid pervious topsheet attached to the backsheet"; "an outer shaping member laterally surrounding the pouch"; and "a wicking barrier between at least a portion of the pouch and the outer shaping member" such as specifically and expressly identified in claim underlying claim 21.

In view of the above, the stated double patenting rejections of claims 12, 13 and 29 are believed to be improper. The withdrawal of such rejections and notification to that effect is solicited.

30 **Claims Rejections - 35 U.S.C. § 102**

5. Claims 1, 2, 6, 14, 16-19, 21, 24-28, 31-35, 37 and 39 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,156,020 to Roe et al. (hereinafter "Roe '020").

These rejections are respectfully traversed.

Claims 1 and 21 are independent claims, with claims 2, 6, 14 and 16-19, directly or indirectly, dependent on claim 1 and claims 24-28, 31-35, 37 and 39 dependent on claim 21.

5 With respect to claim 1, the Office Action states that Roe '020 discloses an absorbent article 20, shown in figure 5, comprising a pouch 152 containing nits 172. The Action further states that the nits 172 are disclosed as being particles of cellulosic batts and that the pouch 152 further comprises a nit conditioner.

With respect to claim 21, the Action states that Roe '020 discloses an absorbent article 20, as shown in figure 5, having a longitudinal axis 100, a transverse axis 110, two longitudinal sides 50 and a target zone 120. The Action further states that the article 20 comprises a liquid impervious backsheet 26 and a liquid pervious topsheet 24, as shown in figures 6 and 6a; a pouch 152 containing nits 172; the pouch 152 is laterally surrounded by an outer shaping member 210; and a wicking barrier separates at least a portion of the pouch 152 from the outer shaping member 210.

10 Claims 1 and 21 are each directed to specified absorbent articles. More particularly, claim 1 requires that the claimed absorbent article include a pouch filled at least in part with free-flowing cellulosic nits. Claim 21 requires that the claimed absorbent article include a conformable intake member comprising a pouch containing free-flowing particles.

Roe '020 simply states that "the particles 172 may be unjoined and free to move within the structure 170." (See Roe '020, column 19, lines 16-17). In contrast to such "unjoined and free to move" particles, however, the invention of claims 1 and 21 require that the cellulosic nit and particles be "free-flowing". In this regards it is noted that the application, at page 6, line 11 through page 7, line 4, specifically defines and describes what is meant in the pending application by the term "free flowing." More particularly, the application hereat specifically states:

25 As used herein, the term "free flowing" refers to the ability of particulates to readily flow in response to shear forces typically encountered in the use of a sanitary napkin worn against a human body - forces similar to those obtained by gently rubbing fingers together while the fingers are immersed in the particles of interest. Dry, loose, granular materials such as hardwood nits and polymethylurea (PMU) particles (hereafter described) are generally

free-flowing under such conditions in contrast to materials such as clay which can deform but generally does not flow freely. [See page 6, lines 11-17, emphasis in the original.]

- 5 Thus, the application makes a clear distinction between the ability to flow freely and the ability to merely move. The freedom "to move" allegedly disclosed in Roe '020 does NOT correspond or correlate to the "free-flowing" ability or characteristic required by claim 1 and 21.

Further, independent claim 1 specifically requires an absorbent article
10 having a pouch filled at least in part with cellulosic nits. Such an absorbent article is not shown or suggested by Roe '020. More particularly, Roe '020 specifically discloses that:

15 The individual particles 172 may be made from any material suitable for use in absorbent articles, including the materials described above with regard to the absorbent core 28 or the storage element 152. The materials used in the
20 particles 172 may be absorbent, nonabsorbent, microporous, macroporous, resilient, nonresilient, etc. or may have any other desirable characteristic. Examples of macroporous absorbent materials suitable for use in the particles 172 include highloft nonwovens, open cell foams, bundles of fibers, sponges and the like. Other absorbent materials include cellulosic batts, capillary channel fibers, osmotic storage materials such as superabsorbent polymers, etc. Nonabsorbent particles 172 may comprise plastic, metal, ceramic, glass, closed cell foams, column packing materials,
25 synthetic fibers, gels, encapsulated gas, liquids and the like. Further, any or all of the particles 172 may include odor absorbents, lotions, skin care formulations, antimicrobials, pH buffers, enzyme inhibitors, and the like.
(Column 19, lines 27-45.)

Thus, Roe '020 specifically discloses that the individual particles 172 may be made from any material suitable for use in absorbent articles (Roe '020, column 19, lines 27-30) and that the materials used in the particles 172 may be absorbent, nonabsorbent, microporous, macroporous, resilient, nonresilient, etc. or may have any other desirable characteristic (Roe '020, column 19, lines 30-34).

Further, while Roe '020 mentions that other absorbent materials including "cellulosic batts" can be used, independent claim 1 specifically requires "cellulosic nits" not "cellulosic batts." Those skilled in the art generally know and appreciate that "cellulosic batts" are generally loose, low density mats of fibers. "Nits", as specifically required by claim 1, are generally described in the application on page 7, line 30 through

page 8, line 6 and defined on page 7, lines 30-31, as “generally particulate material comprising entangled fibers.”

Neither the “cellulosic batts” nor the “bundles of fibers” disclosed in Roe '020 at column, 19, lines 37-38 constitute “cellulosic nits” let alone “free-flowing cellulosic nits”, as required by claim 1.

In addition, claim 1 requires the nits comprise “papermaking fibers and a nit conditioner”. Such nits are nowhere shown or suggested by Roe '020.

While Roe '020 as column 19, lines 43-45, discloses that “any or all of the particles 172 may include odor absorbents, lotions, skin care formulations, antimicrobials, pH buffers, enzyme inhibitors, and the like,” the disclosure of the possible inclusion of such additives in no way corresponds to the claim 1 requirement for a nit conditioner “effective to improve free flow of the nits as compared to the nits without the nit conditioner.” As described in the application, suitable nit conditioners include debonders, lubricants, wax, silicone compounds or other hydrophobic material to modify fiber-fiber interactions during dispersing and/or to modify particle-particle interactions once incorporated into an absorbent article. (See page 28, lines 1-6, for example.)

It is respectfully submitted that the use of a lotion composition such as for the purpose of skin care, as in Roe '020, does not show or suggest the use of a nit conditioner as in the claimed invention. Further, the absorbent article assembly of claim 1 requires the nits be included in a pouch. As will be appreciated, nits contained in such a pouch will generally not contact the skin of the wearer of the absorbent article. Thus, there would appear to be no motivation in the art to use the lotion of Roe '020 on nits contained in a pouch, as in the claimed invention.

Independent claim 21 additionally requires that the claimed absorbent article include “a wicking barrier between at least a portion of the pouch and the outer shaping member.” It is respectfully submitted that an absorbent article, such as claimed and including such a wicking barrier is neither shown nor suggested by Roe '020.

The Action cites Roe '020, column 19, lines 56-59, for support that Roe '020 discloses a wicking barrier separating at least a portion of “the pouch 152 from the outer shaping member 210.”

However, Roe '020, column 19, lines 56-59, simply states:

Different layers of particles may be directly adjacent each other or may be separated by one or more materials, such as netting, scrim, nonwoven or woven webs, film, foam, adhesive, and the like.

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Thus, the passage of Roe '020 cited in the Action makes no mention of a wicking barrier let alone a wicking barrier "between at least a portion of the pouch and the outer shaping member", as required by claim 21.

Still further, the external support 210 of Roe '020 is disclosed as being 10 underneath and substantially co-extensive with the particles 172, as shown by FIG. 16, and is thus a smaller element within the storage element 152, not an "outer shaping member" as required by pending claim 21. In the claimed invention, the outer shaping member is not located within the pouch. Clearly, the external support 210 of Roe '020 does not constitute an outer shaping member, as in the claimed invention.

15 In view of the above, independent claim 1 and the claims dependent thereon (including claims 2, 6, 14 and 16-19) as well as independent claim 21 and the claims dependent thereon (including claims 2, 6, 14 and 16-19) are believed to be patentable over Roe '020 and notification to that effect is solicited.

Further, at least certain of these dependent claims include additional 20 limitations which are believed to further patentably distinguish over Roe '020.

For example, claim 2 is dependent on claim 1 and further requires that the nit conditioner comprises a chemical additive selected from a debonder, a dispersant, a lubricant, and a surfactant. As identified above, a "lotion" does not necessarily correspond to a lubricant and the inclusion or use of a lotion in Roe '020 does not anticipate the 25 claimed inclusion of a nit conditioner.

Claim 14 and 16-18 are each dependent on claim 1 and further require:

1. the nits have an angle of repose of about 70° or less (claim 14);
2. at least 90% by weight of the nits have a particle size range from 100 microns to 800 microns as determined by sieve analysis (claim 16);
- 30 3. the nits have been prepared in a predetermined manner and wherein the nits have a substantially higher absorbent capacity than nits prepared in a manner identical to the predetermined manner but without the addition of the chemical additive, and wherein the chemical additive is substantially nonabsorbent (claim 17); and

4. the nits are substantially free of particles greater than 850 microns (claim 18).

Absorbent articles containing nits with such properties or characteristics are not believed to be shown or suggested by Roe '020. For example, as described in the application, such as at page 6, lines 17-19, free-flowing particles as used in the application generally have an angle of repose of less than about 70°. It is respectfully submitted that the inclusion and use of nits have an angle of repose of about 70° or less is not shown or suggested by Roe '020.

Further the Office Action contention that nits inherently have an angle of repose in the range of 70 degrees or less is not supported by the prior art. The specification expressly provides that:

As used herein, "angle of repose" refers to the angle relative to the horizontal plane formed by the sides of a pile of free flowing particles prepared under controlled circumstances. See page 18, lines 29-31.

Clearly, the assertion in the Action that "nits inherently have an angle of repose, which would fall into the range of 70 degrees or less, as the range enables angles between 70 and -290 degrees" is nonsensical in view of the stated definition of the term "angle of repose" as being relative to the horizontal plane formed by the sides of a pile of free flowing particles.

The Action refers to Roe '020, column 19, line 1 in support of the stated rejection of claims 16 and 18. Roe '020, column 18, line 64 through column 19, line 2, however, states:

The macro particles 172 preferably have a nominal size, preferably between about 1.0 mm and about 25.4 mm, and more preferably between about 2 mm and about 16 mm. However, particles as small as 0.5 mm and smaller, and particles larger than about 25.4 mm are contemplated.

Based on the above passage of Roe '020, the Action somehow has apparently arrived at the conclusions that "100 % of the nits 172 have a particle size of 0.5 mm" and "the pouch is free of particles with a size greater than 0.85 mm."

It is respectfully submitted that nowhere does the cited passage of Roe '020 disclose either that "100 % of the nits 172 have a particle size of 0.5 mm" or that "the pouch is free of particles with a size greater than 0.85 mm."

Claim 24 is dependent on claim 21 and further requires “the free-flowing particles comprise one of polymeric beads, hollow spheres, and mineral particles.” [Emphasis added.]

5 The Action cited Roe '020, column 19, lines 64-65 as disclosing “the free-flowing particles 172 are beads”. As stated above, however, claim 24 specifically refers to polymeric beads. It is respectfully submitted that the cited passage of Roe '020 nowhere shows “polymeric beads”, as claimed. Thus, the cited passage of Roe '020 clearly does not support an anticipation rejection of claim 24.

10 Claim 25 is dependent on claim 21 and further requires that the free-flowing particles comprise at least about 30% nits by weight and no more than about 30% mineral matter by weight. As identified above, Roe '020 fails to disclose the inclusion of nits, as claimed. Clearly, Roe '020 fails to show or suggest absorbent articles wherein the free-flowing particles comprise at least about 30% nits by weight and no more than about 30% mineral matter by weight, as claimed.

15 Claim 33 is dependent on claim 21 and further requires that the free-flowing particles further comprise an enzyme. While the Action cites Roe '020, column 19, lines 43-45 as support for the contention that the pouch 152 of Roe '020 comprises an enzyme, the cited passage refers to “enzyme inhibitors”, not enzymes. The Action fails to identify any showing or suggestion in the prior art of such inclusion of an enzyme.

20 In view of the above, these dependent claims are believed to be clearly patentable over Roe '020 and notification to that effect is solicited.

6. Claims 1-3 and 5 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,649,915 to Chauvette et al. (hereinafter “Chauvette”).

25 The Action asserts that “Chauvette discloses a pouch 20, as shown in figure 4, containing cellulosic nits 12 comprising cellulose fibers, and a nit conditioner comprising a hydrophilic debonder, as disclosed in column 6, liens 54-67.”

These rejections are respectfully traversed.

30 Claim 1 requires “a pouch filled at least in part with free-flowing cellulosic nits.” The fibers 12 of Chauvette are not “free-flowing cellulosic nits.” In fact, Chauvette specifically discloses that the fibers 12 form a fibrous network 18 containing cross linked cellulosic fibers 16. [See FIG. 3 and column 6, lines 5-7] Clearly, the fibers 12 shown in

the figures of Chauvette are NOT "free-flowing cellulosic nits", as required by claim 1 and the claims dependent thereon, including claims 2, 3 and 5.

In view thereof, the withdrawal of the subject rejection of claims 1-3 and 5 is requested and notification to that effect is solicited.

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Claim Rejections - 35 U.S.C. §103

7. Claims 3, 4, 7-9, 11 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to Claim 1 above and further in view of U.S. Patent 5,643,588 to Roe et al. (hereinafter "Roe '588").

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The Action contends that Roe '020 discloses all aspects of the claimed invention but remains silent as to the type of lotion that may be used as the nit conditioner and cites Roe '588 as disclosing the use of a lotion in an absorbent article. The Action proceeds to assert that:

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It would therefore be obvious to one of ordinary skill in the art at the time of the invention to use mineral oil or mineral wax, as taught by Roe '588 as the lotion disclosed by Roe '020.

These rejections are respectfully traversed.

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Roe '588 discloses a lotion composition for a topsheet in an absorbent article. (See Roe '588, abstract and column 9, line 39 - column 10, line 47, for example.) The lotioned topsheet of Roe '588 is not believed to be particularly pertinent to the inclusion or use of a nit conditioner on or with the pouch-contained nits of the claimed absorbent articles. Further, claims 3, 4, 7-9, 11 are dependent on claim 1 and claim 36 is dependent on claim 21. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejections of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Roe '588 herewith, Claims 3, 4, 7-9, 11 and 36 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

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8. Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claim 1 above.

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Claim 10 is dependent on claim 1. As independent claim 1 is believed to be patentable over Roe '020 for the reasons advanced above, claim 10 is also believed to be patentable over Roe '020 and notification to that effect is solicited.

9. Claims 12, 13 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claims 1 and 21 above, and further in view of Chambers.

The Action has recognized that Roe '020 does not show or suggest an
5 absorbent article, as claimed, wherein the nits have the required AUL value (claim 12) and/or the claimed Centrifuge Retention Capacity value (claims 13 and 29). The Action cites Roe '020 column 19, line 39 for support that the particles 172 in the Roe '020 absorbent article can be "superabsorbent material." The Action proceeds cite Chambers, column 4, lines 43-55, for an alleged disclosure of a superabsorbent material satisfying the
10 claimed limitations regarding AUL value and Centrifuge Retention Capacity value.

Such rejections are respectfully traversed.

Claims 12 and 13 are dependent on claim 1 and claim 29 is dependent on
claim 21, respectively. As independent claims 1 and 21 are believed to be patentable over
15 Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejections of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Chambers therewith, claims 12, 13 and 29 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

Furthermore, it is noted that claims 12 and 13 require the "nits" to satisfy
the claimed limitations regarding AUL and Centrifuge Retention Capacity values,
20 respectively. These "nits", as set forth in underlying independent claim 1 are "free-flowing
cellulosic nits, the nits comprising papermaking fibers and a nit conditioner effective to
improve free flow of the nits as compared to the nits without the nit conditioner."

Such "free-flowing cellulosic nits" are in sharp contrast to the
"superabsorbent polymer" identified and described in Chambers at column 4, lines 43-55.
25 "Superabsorbent polymer" as disclosed in Chambers does not correspond to the
"free-flowing cellulosic nits" of the claimed invention.

In view of the above, the subject rejections of claims 12, 13 and 29 are believed to be improper or otherwise to have been overcome and notification to that effect is solicited.

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10. Claims 15 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claims 1 and 21 above, and further in view of U.S. Patent 5,009,650 to Bernardin (hereinafter "Bernardin").

Claims 15 and 23 are dependent on claims 1 and 21, respectively. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejection of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Bernardin herewith, claims 15 and 23 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

11. Claims 20 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claims 1 and 21 above, and further in view of U.S. Patent 5,762,641 to Bewick-Sonntag et al. (hereinafter "Bewick-Sonntag").

Claims 20 and 22 are dependent on claims 1 and 21, respectively. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejection of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Bewick-Sonntag herewith, claims 20 and 22 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

12. Claim 38 was rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claim 21 above.

Claim 38 is dependent on claim 21. As independent claim 21 is believed to be patentable over Roe '020 for the reasons advanced above, claim 38 is also believed to be patentable over Roe '020 and notification to that effect is solicited

25 **Newly Added Claims**

Claims 60 and 61 have been added to more fully and completely claim the disclosed subject matter. Newly added claim 60 is dependent on claim 40 and further requires the wicking barrier to be a polymeric film. Newly added claim 61 is also dependent on claim 40 and further requires the free-flowing particles comprise hardwood nits.

As the Action does not state any basis of objection/rejection relative to claim 40 and as newly added claims 60 and 61 are dependent on claim 40, claims 60 and 61 are believed to be allowable over the prior art of record and notification to that effect is solicited.

Conclusion

In view of the above, all pending claims are believed to be in condition for allowance and notification to that effect is solicited. However, should the Examiner detect any remaining issue or have any question, the Examiner is kindly requested to contact the
5 undersigned, preferably by telephone, in an effort to expedite examination of the application.

Respectfully submitted,



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